

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

NFL ENTERPRISES LLC,

DOCKET FILE COPY ORIGINAL

Complainant,

v.

MB Docket
No. 08-214

COMCAST CABLE
COMMUNICATIONS, LLC,

File No.

CSR-7876-P

Defendant.

Volume 7

The Federal Communications Commission
Hearing Room TW-A363
445 12th Street, SW
Washington, D.C. 20554

Thursday, April 16, 2009

9:30 a.m.

BEFORE:

RICHARD L. SIPPEL,
Chief Administrative Law Judge

Redacted Copy

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2 9:35 a.m.

3 JUDGE SIPPEL: All right. Let's
4 go on the record.

5 MR. CARROLL: Your Honor, one
6 point just to update Your Honor.

7 JUDGE SIPPEL: Yes, sir.

8 MR. CARROLL: The two sides have
9 reviewed and redacted anything that needed to
10 be from the first transcript for Monday. Last
11 evening at about 7:00 p.m., we sent over to
12 the NFL any proposed redactions we had for
13 Tuesday. That was Mr. Hawkins' cross
14 examination.

15 JUDGE SIPPEL: Correct.

16 MR. CARROLL: We're still waiting.
17 I think the NFL has indicated they will need
18 until 12:00 noon today to process that on
19 their side. But I would that that should be
20 available for Your Honor and for release
21 publicly today.

22 JUDGE SIPPEL: All right.

1 MR. CARROLL: And I just wanted
2 because of Your Honor's direction to counsel
3 yesterday I wanted to give you that update.

4 JUDGE SIPPEL: Appreciate that
5 very much, Mr. Carroll. When the transcripts
6 are ready to go, I mean in other words you
7 have all the redactions on there and they're
8 set to go to the press table, bring them into
9 the courtroom with you if you would and Mrs.
10 Gosse will check them and then bring them
11 down. The press office doesn't want to get
12 them without us seeing them first.

13 MR. CARROLL: We should have them
14 before noon, Your Honor.

15 JUDGE SIPPEL: That will be fine.
16 No matter how fast people read they can only
17 read so much at a time. All right. Are we
18 set to go?

19 MR. PHILLIPS: We are, Your Honor.

20 JUDGE SIPPEL: You're first.

21 MR. PHILLIPS: And I'll introduce
22 myself.

1 JUDGE SIPPEL: Yes, sir.

2 MR. PHILLIPS: I'm Will Phillips
3 from Covington & Burling.

4 JUDGE SIPPEL: Your first name,
5 sir?

6 MR. PHILLIPS: Will, sir.

7 JUDGE SIPPEL: Mr. Will Phillips.

8 MR. PHILLIPS: And on behalf of
9 Covington & Burling, they kept me back in the
10 office yesterday. But they let me out and I
11 have the privilege of calling our first
12 witness today which is I believe our last
13 witness of our presentation, Mr. Paul
14 Tagliabue.

15 JUDGE SIPPEL: All right. Is he
16 in court? Is he ready to go?

17 MR. PHILLIPS: He is. He will be
18 right here, Your Honor.

19 JUDGE SIPPEL: Okay. Mr.
20 Phillips, thank you very much. Okay. Mr.
21 Tagliabue, would you raise your right hand
22 please?

1 WHEREUPON,

2 PAUL TAGLIABUE

3 was called as a witness for the NFL

4 Enterprises and, having been first duly sworn,

5 assumed the witness stand, was examined and

6 testified as follows:

7 THE WITNESS: Yes, I do.

8 JUDGE SIPPEL: Thank you, sir.

9 Please be seated.

10 Does Mr. Tagliabue have water?

11 MR. SCHMIDT: That's his water,

12 Your Honor.

13 JUDGE SIPPEL: Right there.

14 That's the best we can do, sir. Okay.

15 DIRECT EXAMINATION

16 BY MR. PHILLIPS:

17 Q Good morning, Mr. Tagliabue. Can
18 you tell us what your role was at the National
19 Football League?

20 A I served as the Commissioner of
21 the League, Chief Executive from 1989 until
22 late 2006.

1 Q And how do you spend your time
2 now? Your professional time?

3 A Basically I guess in three
4 different areas. I'm involved with the boards
5 or committees of a couple universities,
6 specifically Georgetown University where I'm
7 about to become Chairman of the Board and also
8 the State University of New York. That's
9 probably the biggest single piece of my time.
10 I do some business advisory services,
11 consulting for the NFL and some other
12 businesses and then I do some things for
13 Covington & Burling.

14 Q Do you continue to have an ongoing
15 relationship with the National Football
16 League?

17 A Yes, I do. I have a consulting
18 agreement with the League.

19 Q Now when you were the Commissioner
20 of the National Football League could you
21 generally describe your responsibilities?

22 A The Commissioner's role is very

1 broad. I would say it's to deal with the 32
2 owners, to deal with outside business
3 partners, to deal with the NFL Players
4 Association which is the union representing
5 the football players and it includes broad
6 authority to act in the best interest of the
7 League and that includes mediating disputes,
8 ensuring the integrity of the game, ensuring
9 the integrity of all of the teams' operations.
10 But basically it's a broad range of internal
11 responsibilities and external
12 responsibilities.

13 Q Sort of like the Chief Executive
14 Officer of the League?

15 A Yes, it is the Chief Executive of
16 the League.

17 Q While you were commissioner, was
18 the NFL Network created on your watch?

19 A Yes.

20 Q And did the senior officer of the
21 NFL Network report to you?

22 A Yes, he did. Mr. Bornstein.

1 Q Now, Mr. Tagliabue, do you know
2 Mr. Roberts, the Chairman and Chief Executive
3 Officer of Comcast?

4 A Yes, I do.

5 Q How long have you known him?

6 A I'm not entirely clear. I would
7 say something of less than 10 years. It's
8 conceivable I might have met him in the longer
9 distant past, but I don't recall having any
10 serious substantial dealings with him until
11 the last decade.

12 Q And you've had discussions with
13 him over the last decade in connection with
14 possible relationships between the National
15 Football League and Comcast.

16 A Yes, I have.

17 Q Now I'd like to focus you on the
18 period in 2005 and 2006 when the NFL and
19 Comcast were in discussions about licensing an
20 eight game package of live, regular season
21 National Football games. Do you recall the
22 discussions in which Comcast was interested in

1 licensing some of those games?

2 A Yes, I do.

3 Q Do you recall the network on which
4 Comcast was intending to broadcast those
5 games?

6 A Initially, I think they were
7 talking about the Outdoor Life Network, OLN,
8 and then as the discussions went forward the
9 name of the network basically was changed to
10 Versus, V-E-R-S-U-S, and we had discussions
11 about whether other names would be better
12 brands if we were going to get a deal done.
13 But it basically went to move it onto Versus.

14 Q Now the eight team package of
15 live, regular season games, is that the same
16 package that was later placed on the NFL
17 Network?

18 A Yes, basically.

19 Q Now did you talk directly --

20 JUDGE SIPPEL: I want to clarify.
21 This is just the licensing from the NFL, not
22 from a network. This was the NFL license to

1 games.

2 THE WITNESS: Yes, we owned, the
3 League owned, the rights to all of the games
4 for television purposes.

5 JUDGE SIPPEL: Yes.

6 THE WITNESS: And we had already
7 licensed most of the games to other networks
8 to be televised and we were down to this small
9 package of approximately eight games out of
10 256 and we were having conversations with
11 Comcast and other media companies about
12 putting these eight games in the package and
13 licensing them to basically what would be a
14 new football network or sports network. The
15 other 248 of the regular season games had
16 already been licensed to parties such as CBS,
17 Fox, NBC, ESPN and so forth.

18 JUDGE SIPPEL: So eight games, the
19 package, you were going to package the eight
20 games and were they going to be -- Were they
21 supposed to be licensed to Versus? Is that
22 how it initially started out?

1 THE WITNESS: No, the way it
2 initially started was that we conceived of
3 this, created this package of eight games, and
4 I say basically eight because we had some
5 conversations about whether it might be nine
6 in certain years, so eight or nine games that
7 were going to be --

8 JUDGE SIPPEL: At the end of the
9 season.

10 THE WITNESS: At the end of the
11 season on Thursday nights and on weekend
12 nights and we initiated discussions with a
13 number of different large media companies to
14 see if there could be some type of a licensing
15 arrangement or a joint venture arrangement to
16 create a network to carry these games.

17 JUDGE SIPPEL: I see. Okay.

18 THE WITNESS: So we were in
19 parallel discussions with a number of
20 companies. Ultimately, lots of the
21 discussions centered on Comcast.

22 JUDGE SIPPEL: But you're at that

1 point in time and what was the year anyway?

2 THE WITNESS: Well, we started I
3 would say the discussions became serious and
4 substantive in late 2005 and into January of
5 2006. In the prior year, we had focused on
6 the games that we were selling to these other
7 parties.

8 So from late 2004 to early 2005 we
9 had focused on CBS, Fox, ABC, NBC, ESPN. Then
10 by the spring of 2005, we had reached
11 agreements on those games and we then had the
12 contractual right to proceed on this eight
13 game package during the second half of '05 and
14 into January of '06. So that's basically the
15 time frame we're talking about here. I had
16 had some earlier discussions with Mr. Roberts
17 in 2003 and 2004. But they were quite
18 preliminary.

19 JUDGE SIPPEL: Now was
20 this -- I'll be right with you. I'm sorry,
21 Mr. Phillips.

22 MR. PHILLIPS: No, Your Honor,

1 please.

2 JUDGE SIPPEL: Was this when you
3 first started talking seriously then with Mr.
4 Roberts about this I'm going to take your
5 dates in late 2005. Would I be correct?

6 THE WITNESS: Yes, late '05.

7 JUDGE SIPPEL: Roughly. Was the
8 contemplation of a joint venture between
9 Comcast and NFL at that point?

10 THE WITNESS: We were looking at
11 different business structures which were from
12 our perspective going to be new types of
13 structures including joint ventures,
14 partnerships. The exact form of the venture
15 you know was going to take account of the
16 financial arrangements and the legal advice
17 that we got. But I would say the basic point
18 was that the structure we were looking at for
19 this eight game package and this new network
20 was going to be something other than just a
21 straight rights authorization. It was going
22 to be more than just a contractual rights

1 authorization.

2 JUDGE SIPPEL: More than just a
3 license.

4 THE WITNESS: More than just a
5 license, yes.

6 JUDGE SIPPEL: Okay. I'm sorry.
7 Mr. Phillips, you may go forward. I'm sorry.

8 BY MR. PHILLIPS:

9 Q But the structure also had a
10 licensed component.

11 A Yes. We would create the
12 structure and then the games would be licensed
13 within that frame work.

14 Q And without revealing the amount
15 of money that was going to be paid, Mr.
16 Tagliabue, I take it there was money that
17 would be paid to the NFL as part of that
18 licensing.

19 A Yes, there would be.

20 Q How long had Mr. Roberts from
21 Comcast expressed interest in acquiring the
22 rights to license games from the NFL?

1 A The specific games, well, he had -
2 - Let me put it this way. He had been
3 interested in competing for the license to
4 other packages of games that we had
5 specifically what we call a Sunday Ticket
6 Package. We had also had discussions about
7 other types of video rights including Video on
8 Demand and then at some point I had indicated
9 to him that we were probably going to be
10 creating another package on top of the
11 packages we already had and we would be
12 talking to multiple parties about licensing
13 that package and creating some type of a new
14 network and I would say on the latter point
15 those discussions started in mid to late '04
16 and carried over into early '05 and then, as
17 I said in response to His Honor's questions,
18 by early '05 it was clear contractually that
19 we could proceed substantive in-depth
20 discussions of that new kind of
21 network/package.

22 Q Focusing on the period of

1 negotiations in late '05 and early '06, you
2 spoke directly with Mr. Roberts.

3 A Yes, I did.

4 Q And how often would you estimate?

5 A It would vary depending on where
6 we were in the discussions with him and
7 Comcast, where we were in the discussions with
8 the other media companies we were talking to,
9 depending upon what other things I was doing,
10 what other things he was doing. But by the
11 time we got to November and December and into
12 January we were talking at least probably a
13 couple of times a week on average.

14 Q Can you describe the general
15 subject of these conversations?

16 A Well, yes, the subject was the
17 structure of this venture. It was new. You
18 could call it innovative. You could call
19 novel. You could call it different. I think
20 that a lot of the discussion focused on
21 certainly from my perspective and I believe
22 from his perspective that we, the NFL, were

1 talking about being part of a venture which
2 didn't include distribution of games and a
3 distributive role for the NFL.

4 Comcast had for the most part been
5 a cable MSO and at the cable operator level
6 was now talking about becoming a network and
7 owning content above beyond whatever content
8 it had owned as an MSO. So in some ways each
9 company was talking to the other about how it
10 would evolve and how that would be structured
11 in a new joint venture and that included
12 licensing arrangements, equity participation,
13 exit strategies, the relationship of this new
14 venture to Comcast, the parent company, and so
15 forth.

16 Q You mentioned MSO, Mr. Tagliabue.
17 What do you mean?

18 A It's a cable system operator at
19 what I call the retail level dealing directly
20 with the customers in their homes or in their
21 places of business as opposed to a network
22 which I think of as a wholesale level in

1 addition to --

2 Q You mentioned that you discussed
3 distribution. Do you recall the level of
4 distribution that you discussed with Mr.
5 Roberts in terms of how Versus would be
6 carried?

7 A Well, we talked about our interest
8 and if I was interested in getting the widest
9 possible distribution for the new network,
10 whatever it was, and we had a track record of
11 being very successful with major audiences for
12 NFL games on cable television and we wanted to
13 -- we had very wide distribution through our
14 ESPN agreements and we were looking for
15 equivalent or similar distribution for
16 whatever this new network might be.

17 Q And what was Mr. Roberts' reaction
18 in those discussion?

19 A Well, when we were talking about a
20 joint network with him he was in accord that
21 it should have the widest possible
22 distribution.

1 Q Now I'd like to focus you, Mr.
2 Tagliabue, on a conversation that you had with
3 Mr. Roberts in late January, on or about
4 January 27, 2006. Do you recall that
5 conversation?

6 A Yes, I do.

7 Q Was it by -- Was it in person or
8 by telephone?

9 A I'm quite sure it was on a
10 telephone.

11 Q Do you recall where you were?

12 A I don't recall. Looking at my
13 calendar it appears that I was in New York
14 probably in my office because I had luncheon
15 commitments in New York later in the day.

16 Q Did you call him? Did he call
17 you?

18 A I think I called him. Whether I
19 reached him on the first effort or whether he
20 called me back, I don't know. But I think I
21 initiated the call.

22 Q Was what the purpose of you

1 calling?

2 A The purpose of the call was to
3 tell him what decision the League had reached
4 with respect to the disposition of this new
5 league game package. We had had a League
6 meeting the prior day and we had earlier that
7 week had a meeting of our League Broadcast
8 Committee. So we had finally made some
9 decisions and I was calling him to tell him
10 what those decisions were.

11 Q And what did you tell him?

12 A What I told him is that we had
13 decided to keep the games internal to the
14 League and to put them on the NFL Network,
15 that at that point there would not be any
16 third party ownership involvement or joint
17 venture or partnership involvement, that I
18 summarized for him my thinking as to what went
19 into that decision and in my view and I told
20 him this the very things that had made this
21 possible joint venture attractive, the
22 innovative aspects of it, were the very things

1 that kind of brought it down, that the
2 innovative aspects, the new aspects, created
3 risks which we saw some risks. He saw some
4 risks and we were not comfortable in going
5 forward with that arrangement.

6 I also told him that owners had
7 some other -- There was some other thinking
8 that was important to owners, more important
9 to them than to me, and that's where we were.

10 Q Now after delivered this news to
11 Mr. Roberts on the telephone, Mr. Tagliabue,
12 do you recall how he responded to you?

13 A I'm sure he asked some questions
14 and whatever questions or comments he made I
15 answered or tried to answer and then he said
16 that he thought it was unfortunate because it
17 was not going to be positive for the
18 relationships between the NFL and the cable
19 industry going forward.

20 Q Now you said he said it wasn't
21 going to be positive for the relationship
22 between the NFL and the cable industry. He

1 used the words "the cable industry."

2 A Yes, he did.

3 Q And what did he mean by that?

4 MR. CARROLL: Object to form. He
5 can ask for his understanding, but he can't
6 speak for what Mr. Roberts said.

7 JUDGE SIPPEL: I'll sustain the
8 objection.

9 BY MR. PHILLIPS:

10 Q What did you understand his
11 reference to the cable industry meant?

12 A Well, to me the cable industry
13 meant the other cable MSOs, the major system
14 operators. He had used that term before. We
15 had talked before about the role of the other
16 cable system operators, Time Warner and
17 others, in distributing any network that we
18 might create with him and they were also going
19 to be among the distributors for the NFL
20 Network and he said that he thought that our
21 decision didn't bode well, was not positive
22 for the League's relationships with the cable